

1 MICHAEL W. MALTER, #96533
JULIE H. ROME-BANKS, #142364
2 KRISTINA A. PARSON, #257840
Binder & Malter, LLP
3 2775 Park Avenue
Santa Clara, CA 95050
4 Telephone: (408)295-1700
Facsimile: (408) 295-1531
5 Email: kristina@bindermalter.com

6 Attorney for secured creditor
DAN OSTRANDER, Trustee of
7 THE OSTRANDER REVOCABLE TRUST

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9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA, DIVISION**

11 In Re

12 Richard Steven Louie and Stephanie
13 Yinman Chan,

14 Debtors.

Case No. 11-54357 SLJ7

MWM-127

Chapter 7

Date: June 28, 2011

Time: 9:30 a.m.

Place: Courtroom 3099
280 South First Street
San Jose, CA 95113

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19 **MOTION FOR RELIEF FROM STAY**
(11 U.S.C. §362(d)(1), (2))

20 TO DEBTORS RICHARD STEVEN LOUIE and STEPHANI YINMAN CHAN:

21 Secured claimant, Dan Ostrander, as Trustee of The Ostrander Revocable Trust,
22 (the "Movant") hereby moves the Court for an order granting him relief from the
23 automatic stay to immediately record notice of default as to the real and personal
24 property interests of Debtors Richard Steven Louie and Stephanie Yinman Chan
25 ("Debtors") in and at the real property located at 720 W. 2nd Avenue, Chico, California
26 (the "Subject Property") and then to exercise all further rights and remedies under state
27 law to foreclose his interest therein.
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1 The basis for the requested relief is two-fold: first, there is no equity in the
2 Subject Property to benefit the Debtors or the estate. Second, Movant's interest is not
3 protected by an adequate equity cushion and there are substantial pre-petition
4 payments owed for property taxes which continue to incur interest and penalties.

5 The Movant respectfully represents as follows in support of this Motion:

6 1. The Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy
7 Code on May 5, 2011 (the "Petition Date").

8 2. On or about January 15, 2003, Debtor's executed an Installment Note in
9 the original principal amount of \$1,185,000 in exchange for a loan from Butte Creek
10 Investment Corporation ("Butte Creek"). The Installment Note was secured by a Short
11 Form Deed of Trust and Assignment of Rents ("Deed of Trust and Assignment of
12 Rents") on the Subject Property recorded on March 4, 2003 in Butte County. Fidelity
13 National Title Insurance Company is the trustee under the Deed of Trust. The
14 Installment Note obligated Debtors to pay Butte Creek \$1,185,000 in monthly
15 installments of \$7,406 which represented interest only payments until April 1, 2018
16 ("Installment Note"). True and correct copies of the Installment Note and Deed of Trust
17 and Assignment of Rents are attached as Exhibits "A" and "B" respectively, to the
18 Declaration of Daniel Ostrander filed concurrently herewith and are incorporated herein
19 by reference.

20 3. On April 30, 2003, Butte Creek assigned an undivided 15% of its interest
21 in the Deed of Trust and Assignment of Rents to Daniel Ostrander ("Assignment of
22 Deed of Trust") recorded on May 1, 2003 in Butte County. A true and correct copy of
23 the Assignment of Deed of Trust is attached as Exhibit "C" to the Declaration of Daniel
24 Ostrander filed concurrently herewith and is incorporated herein by reference. Butte
25 Creek was involved to facilitate an Internal Revenue Code §1031 tax exchange.

26 4. No Internal Revenue Code §1031 tax exchange occurred and on October
27 1, 2003, Butte Creek assigned its remaining undivided 85% interest in the Deed of Trust
28 and Assignment of Rents to Daniel Ostrander ("Second Assignment of Deed of Trust")

1 recorded on October 3, 2003. The Second Assignment of Deed of Trust effectively
2 assigned all of Butte Creek's interest in the Subject Property to Movant. A true and
3 correct copy of the Second Assignment of Deed of Trust is attached as Exhibit "D" to
4 the Declaration of Daniel Ostrander filed concurrently herewith and is incorporated
5 herein by reference.

6 5. On March 6, 2008, Daniel Ostrander assigned his interest in the Subject
7 Property to Movant ("Third Assignment of Deed of Trust") recorded on March 14, 2008
8 in Butte County. A true and correct copy of the Third Assignment of Deed of Trust is
9 attached as Exhibit "E" to the Declaration of Daniel Ostrander filed concurrently
10 herewith and is incorporated herein by reference.

11 6. The Installment Note expressly provides that on or before January 15th of
12 each year, Debtors shall provide the holder of the note with proof that property taxes
13 have been paid for the previous year.

14 7. Movant is the property manager for the Subject Property. Pursuant to the
15 terms of the Deed of Trust and Assignment of Rents, Movant collects the rents received
16 from the property and withholds the equivalent of the monthly installment due under the
17 terms of the Installment Note.

18 8. Movant sent Debtors proceeds from the rents to cover the majority of the
19 property taxes due for the Subject Property. It was Movant's belief that Debtors were
20 using the funds provided to keep the property taxes current for the Subject Property.

21 9. Paragraph 4 of the Deed of Trust requires the Debtors to pay, satisfy and
22 discharge all general and special taxes affecting the Subject Property before such taxes
23 become delinquent. Paragraph 4 of the Deed of Trust permits Movants to make any
24 such payment that the Debtors fail to make.

25 10. Prior to the Petition Date, the Debtor failed to pay Butte County real
26 property taxes assessed against the Subject Property as and when due. On May 24,
27 2011, after being notified of the Debtor's bankruptcy filing, Movant learned that the
28 Debtors have not been paying the property taxes for the Subject Property. The

1 defaulted tax balance is now \$41,525.43. A true and correct copy of the Butte County
2 Tax Collector's accounting of the delinquent tax debt in the amount of \$41,525.43 is
3 attached as Exhibit "F" to the Declaration of Daniel Ostrander filed concurrently herewith
4 and incorporated herein by reference.

5 11. The Butte County Tax Collector refused to allow Movant to work out a
6 payment plan for the delinquent taxes unless Movant paid the current years taxes,
7 which were delinquent. Movant paid the taxes due for 2010, including the penalties that
8 were assessed. True and correct copies of the bill for the 2010 property taxes for the
9 Subject Property, evidence of Movants payment and evidence of the County's receipt of
10 said payment are attached as Exhibit "G" to the Declaration of Daniel Ostrander filed
11 concurrently herewith and incorporated herein by reference.

12 12. The Debtors schedules value the Subject Property at \$800,000. A true
13 and correct copy of the Debtor's Schedule A is attached to the Declaration of Dan
14 Ostrander filed in Support of the Motion for Relief from Stay as Exhibit "H". The
15 outstanding balance on the Installment Note is \$1,185,000. The outstanding property
16 tax debt owed to Butte County is \$41,525.43. Accordingly, the Debtors do not have any
17 equity in the subject property and Movant's interest is not protected by an adequate
18 equity cushion.

19 13. The Debtors failure to pay the property taxes as and when due creates a
20 lien for the benefit of Butte County which continues to incur interest and penalties. This
21 diminishes the properties value.

22 14. The Debtor did not file a Statement of Intention indicating an intent to cure
23 the delinquent tax debt and retain the Subject Property.

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WHEREFORE, the Movant respectfully requests that the Court enter an order GRANTING relief from the automatic stay of 11 U.S.C. §362 to permit Movant to immediatly record notice of default as to the real and personal property interests of the Debtor as to the Subject Property and then to exercise all further rights and remedies under state law to foreclose their interests in said property. Additionally, Movant respectfully requests a waiver of the 14 day stay provided by Tule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

Dated: June 13, 2011

BINDER & MALTER, LLP

By: /s/ Michael W. Malter
Michael W. Malter
Attorney for Secured Creditor
Dan Ostrander